IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 19TH JULY 2007 / 28TH ASHADHA 1929

Bail Appl..No. 4374 of 2007()

[CRIME NO.222/07 OF ARECODE POLICE STATION]

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PETITIONERS/ACCUSED 1 AND 2

1. PAIKKATTCHALI SAIDALAVI, S/O. ABDURAHIMAN, KIZHAKKEKANDI HOUSE, POOVATHIKKAL P.O., ARECODE.

2. NAGERI NAJEEBULLA, S/O. ABOOBACKER, NAGERI HOUSE, POOVATHIKKAL P.O., ARECODE.

BY ADV. SRI.P.SAMSUDIN

RESPONDENTS: COMPLAINANT

THE STATE OF KERALA, REPRESENTED BY THE SUB INSPECTOR OF POLICE, ARECODE, THROUGH THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.P.RAVEENDRA BABU

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 19/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

B.A.No.4374 of 2007

Dated this the 19th day of July 2007

O R D E R

Application for anticipatory bail. Petitioners are accused 1 and 2 in a crime registered under Sections 307 and 353 I.P.C. The crux of the allegations is that enraged by the conduct of the de facto complainant, who in his capacity as village officer, was attempting to interpose the commission of an offence - illicit transportation of sand, the petitioners obstructed him in the discharge of his duties and pushed him into the river where strong current was flowing, with an intention to cause his death. The alleged incident took place on 26/6/2007. Crime has been registered. Investigation is in progress. The petitioners apprehend imminent arrest.

2. The learned counsel for the petitioners submits that the petitioners are absolutely innocent. Totally false and vexatious allegations are being raised. There was an exchange of words and the official, who had questionable motives in his attempt to seize a boat, had accidentally fallen into the water, it is submitted.

3. The learned Public Prosecutor opposes the application. The available indications point to the guilt of the accused. There is absolutely no justification to invoke the equitable discretion under Section 438 Cr.P.C now, submits the learned Public Prosecutor.

4. Having considered all the relevant inputs, I am of the opinion that there is merit in the opposition by the learned Public Prosecutor. I do not find any circumstances which would justify invocation of the extraordinary equitable discretion under Section 438 Cr.P.C. This is a fit case where the petitioners must appear before the learned Magistrate or the investigating officer and seek regular bail in the normal and ordinary course.

5. In the result, this petition is dismissed. Needless to say, if the petitioners surrender before the investigating officer or the learned Magistrate and apply for bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits, in accordance with law and expeditiously.

(R.BASANT, JUDGE)

jsr

// True Copy// PA to Judge

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007